Cattle Grazing near Grand Forks

Complaint Investigation 020412

Forest Practices Board

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The Investigation

On July 16, 2002, a Christina Lake resident (the complainant) submitted a complaint to the Forest Practices Board about the control of cattle within a range adjacent to the Kettle River, east of Grand Forks. A Grand Forks resident (the licensee) grazes cattle on the range, which is known locally as the Oxbow-Boothman range. The complainant claimed there have been multiple contraventions of the range-use plan (RUP) for the area. The complainant maintained that the licensee did not follow the grazing schedule, allowed too many cattle on the range, did not maintain the irrigation system, and allowed cattle within the riparian area adjacent to the Kettle River. The complainant also asserted that the Ministry of Forests (MOF) failed to enforce the requirements of the RUP.

The Board decided to investigate whether the licensee's grazing and range practices complied with the *Forest Practices Code of British Columbia Act* and regulations (the Code), and whether government enforcement was appropriate.

Background

The Oxbow-Boothman range is approximately five kilometres east of Grand Forks. The range consists of three distinct pasture areas: the east Boothman, west Boothman and the Oxbow. Although the Oxbow-Boothman range is categorized as open range, it is cultivated pasture that consists of mostly seeded grasses as opposed to native grasses.

Government was considering designating the Oxbow pasture a provincial park under BC's Protected Areas Strategy but has not yet made a decision. In light of this, MOF and the Ministry of Agriculture, Food and Fisheries decided to make use of Grazing Enhancement Program funds to increase the forage production on the Boothman pasture to the level that both the Boothman and Oxbow pastures currently produce. The ministries determined that installing a new irrigation system and replanting the Boothman pasture would eliminate the need for the licensee to use the Oxbow pasture in the future.

Because of problems installing the irrigation system and replanting the Boothman pasture, the licensee had to modify where and how cattle grazed the pastures. In addition, throughout the spring and summer vandals repeatedly destroyed portions of the irrigation system, fences and gates, allowing cattle to wander onto the highway, posing a significant public safety hazard. The licensee and MOF repeatedly rounded up the cattle and eventually installed a locked gate on the Boothman pasture.

Issues Investigated

The Board examined the following questions:

1. Did grazing and range practices comply with the RUP?

2. Was government enforcement appropriate?

Discussion

Did grazing and range practices comply with the RUP?

The complainant claimed there were four contraventions of the RUP. The complainant maintained that the licensee:

- ?? did not follow the grazing schedule;
- ?? allowed too many cattle on the range;
- ?? did not maintain the irrigation system; and
- ?? allowed cattle within the riparian area adjacent to the Kettle River.

Section 98 of the *Forest Practices Code of British Columbia Act* (the Act) states that a person must not allow livestock to graze on Crown range unless the person is authorized to do so by an agreement under the *Range Act*, and is acting in accordance with an RUP. The Board examined the RUP to determine whether the licensee complied with it.

Was the range overgrazed as a result of the grazing schedule not being followed?

The complainant asserted that the licensee did not follow the grazing schedule and that this resulted in the range being overgrazed. The complainant asserted that the licensee did not graze the cattle successively amongst the three pastures. He noted that cattle were being grazed in the west Boothman and the Oxbow pastures at the same time.

The complainant referred to a management agreement that specified cattle should be rotated from one pasture to another, based on the height of forage. The management agreement was part of a 1992 grazing permit. However, the 1992 grazing permit was replaced with a 10-year grazing licence and an RUP in 1997. The grazing schedule contained in the 1997 RUP does not specify that cattle be rotated among the pastures.

The RUP states that the grazing objective is to minimize any negative impact on plant communities, wildlife populations and the physical environment, while optimizing livestock production. The RUP also states that cattle-grazing will not exceed levels deemed to be

detrimental to the grass. The RUP does not include any measurable or defined criteria to evaluate if the range is overgrazed—evaluation is left to ministry officials.

MOF began installing an irrigation system on the Boothman pasture in the spring of 2002. Many difficulties delayed replanting of the east and west Boothman pastures. Consequently, MOF decided to keep the cattle in the west Boothman and Oxbow pastures while the east Boothman was tilled and planted with a temporary crop of oats. In September, the cattle were to be grazed in the east Boothman while the west Boothman was tilled and seeded with grass. In the spring of 2003, MOF plans to turn out cattle in the Oxbow pasture until the west Boothman is ready to be grazed. Meanwhile, the east Boothman pasture will be tilled and grass-seeded. MOF believes the range improvements will diminish or eliminate the need for the licensee to graze cattle on the Oxbow pasture.

In 2002, range inspection reports did not indicate any concern with overgrazing, including the Oxbow pasture, but they did note concern with the number of cattle on the entire range. As a result, the licensee was directed to reduce the number of cattle. MOF stated that any over-grazing of the Boothman pastures was inconsequential, as the pastures were to be tilled and replanted in the fall of 2002.

The RUP does not specify that cattle must be rotated among the three pasture areas. The RUP does not define criteria to evaluate overgrazing, but leaves this decision to MOF. MOF range inspections did not indicate a problem with overgrazing. MOF directed the licensee's grazing of the pasture in 2002 in response to the progress of range improvements, and the licensee followed MOF's direction. The Board finds that the licensee complied with the RUP grazing schedule and did not allow cattle grazing to exceed levels deemed to be detrimental to the grass.

Were there too many cattle on the range?

The complainant asserted that the licensee was grazing too many cattle on the range, contrary to the RUP. The RUP states there were to be 35 cattle from June 1 to September 30 each year, amounting to 140 animal unit months of forage.

On July 15, 2002, the complainant noted there were 46 cows and one bull on the range. On the same day, MOF staff inspected the range and noted there were 42 cattle instead of 35. MOF took several enforcement actions, which resulted in the licensee reducing the number of cattle to 35 by August 6, 2002.

The licensee, complainant and MOF all stated that, from July 15 to August 2, 2002, there were more cattle on the range then specified in the RUP. The licensee did not comply with section 98 of the *Forest Practices Code of British Columbia Act*, as more cattle were on the range than specified in the RUP.

Was the irrigation system maintained?

The complainant asserted that the licensee did not maintain the irrigation system, as specified in the RUP, and that the replacement of the irrigation system proves the original system was not maintained.

The RUP states that the licensee is responsible for maintaining water developments and irrigation systems on the pasture.

The original irrigation system was installed in 1975, and consisted of used equipment. The licensee has been responsible for maintaining the system since 1985, and has receipts for repairs and parts purchased. MOF staff told the Board that the licensee maintained the irrigation system, but the system was wearing out as a result of normal use and vandalism. MOF and the Ministry of Agriculture, Food and Fisheries—independent of the licensee—decided to install a better irrigation system and replant the Boothman pasture.

Both MOF and the licensee stated that the irrigation system needed replacing because of normal usage, and the licensee did repair the previous system. Considering this, the Board finds that the licensee complied with the RUP requirement to maintain the waterworks and irrigation system.

Were cattle allowed within the riparian areas adjacent to the Kettle River?

On August 1, 2002, the complainant notified the Board that cows were seen in the riparian area adjacent to the Kettle River, contrary to the RUP.

The RUP requires that the licensee maintain fences enclosing the pasture. The fences are to bar cattle access to the Kettle River, preventing livestock from causing siltation, eroding stream banks or damaging shrub cover along the Kettle River. The Oxbow-Boothman range was subject to many acts of vandalism during the summer of 2002. Fences and equipment were damaged on several occasions on or about July 10, July 29 and August 3. As a result of the vandalism, the licensee had trouble preventing the cattle from entering the riparian areas.

As part of the Board investigation, all of the parties examined the riparian areas along the Kettle River next to the Oxbow pasture. There was evidence of a few cattle having been in the riparian area. However, there was no evidence of excessive siltation or erosion caused by the trespassing cattle. The parties agreed that there was little evidence of harm.

The RUP states that fences bar cattle access to the Kettle River and that the licensee is to maintain fences. Some cattle were grazing in the riparian area adjacent to the Kettle River. Therefore, the licensee did not comply with the RUP and section 98 of the *Forest Practices Code of British Columbia Act*. Even though there were cattle in the riparian area, the impact to the area was minimal. Consequently, the Board concludes that the non-compliance was not significant.

Was government enforcement appropriate?

The complainant asserted that, despite numerous contraventions, MOF did not enforce the requirements of the RUP.

The purpose of enforcement is to promote compliance with the Code. Enforcement activities generally begin with monitoring and inspections. If problems are discovered, there are a number of tools available to the ministries to promote compliance. These tools escalate in severity and include written instructions, stop-work orders, administrative penalties, prosecution, and licence cancellation. Field inspections and monitoring are the most common activities in a ministry's enforcement program. These should be done at a frequency that is appropriate for the risk that exists to the resource.

Because of the installation of the irrigation system and tilling of the pastures, MOF had a range technician on site for most of the summer. Additionally, other MOF range staff inspected the area, mostly in response to vandalism. MOF did not note any concern with the licensee's compliance with the RUP, except that there were too many cattle on the range. In response, MOF took enforcement action.

On July 15, 2002, the same day the complainant counted the cattle, MOF staff independently noted there were too many cattle on the range. MOF mailed a compliance notice to the licensee, instructing the licensee to remove some of the cattle by July 24, 2002. The order also instructed that the gate at the west Boothman pasture be repaired. The licensee did not receive the notice until July 25, 2002. The licensee called MOF to discuss the compliance notice and was given an extension until July 28. On July 29, 2002, MOF inspected the pasture again and noted that the gate had been repaired. However, there were still too many cattle on the range and there had been more vandalism. MOF again extended the deadline for removing the cattle until approximately July 31, 2002. On August 2, 2002, MOF inspected the range and noted there were 42 cattle as opposed to the 35 required by the RUP. MOF issued a violation ticket to the licensee. On August 6, 2002, the licensee notified MOF that the extra cattle were removed and that 35 remained on the range.

The licensee stated that the violation ticket was unwarranted because recent vandalism made controlling the cattle difficult. When the cattle were let loose by vandals, the cattle scattered and often crossed the Kettle River to the licensee's property. This hampered the licensee's efforts to separate and move the appropriate animals back into the Oxbow-Boothman range. The licensee also stated that, because of the vandalism and MOF range improvements, the cattle turnout was later than specified in the RUP. There were not 35 cattle on the range until June 19, 2002.

While the number of cattle exceeded 35, the RUP grazing schedule sets out both the number of cattle and length of time on the range. Consequently, even though there were excessive numbers of cattle on the range, that did not mean that the specified level of grazing (expressed as animal unit months) was exceeded. On July 3, MOF and the licensee met to discuss the range improvements. The licensee stated that, on that day, MOF staff told him that he could have

more than 35 cows on the range. MOF's minutes of the July 3 meeting do not confirm the complainant's assertion. The licensee stated that in the past, such agreements were permitted and were not in writing.

MOF had staff on site for most of the summer, and did perform inspections. MOF began enforcement action when the number of cattle on the range was greater than specified in the RUP. While the licensee stated that he was told he could have more than 35 cows on the range, the compliance notices made it quite clear he could not. However, notifying the licensee of the contravention by mail was less than ideal. The compliance notice required removal of the cattle by a specified date, yet there was no way of knowing when the licensee would receive the notice.

The Board concludes that MOF made use of progressive enforcement by establishing deadlines for removing the extra cattle, extending those deadlines when the delay was reasonable, and ticketing the licensee when there were still too many cattle on the range. Additionally, enforcement was not needed in response to cattle in the riparian area adjacent to the Kettle River. The impact to the area was minimal and the licensee had repaired fences and gates. The Board finds that MOF appropriately enforced the requirements of the RUP.

Conclusions

The complainant claimed there were four contraventions of the RUP. The Board concludes that the requirements of the RUP were met in two of the four instances. As required by the RUP, the licensee followed the grazing schedule as prescribed by MOF and maintained the irrigation system. Twice, the licensee was not in compliance with section 98 of the *Forest Practices Code of British Columbia Act*, as there were more cattle on the range than specified in the RUP and cattle were within the riparian areas of the Kettle River. However, the impact on the environment was minimal and therefore the non-compliance was not significant.

MOF monitored the grazing of the range in 2002, determined the licensee exceeded the number of cattle allowed on the range by the RUP, and took appropriate enforcement action. Enforcement was not needed in response to cattle in the riparian area adjacent to the Kettle River, as the impact to the area was minimal. Government enforcement was appropriate.